Rule 59, Colorado Rules of Civil Procedure 1, 3

Rule 59(j), Colorado Rules of Civil Procedure 1, 3

Rule 251.3, Colorado Rules of Civil Procedure 2

Rule 408, Colorado Rules of Evidence 9

Rule 8.3, Colorado Rules of Professional Conduct 9

II. RESPONDENTS BRIEF IN OPPOSITION TO STAN J.H. LEE'S PETITION FOR WRIT OF CERTIORARI

A. STATEMENT OF THE CASE AS TO THE KATCHEN TRUSTS

Following the Trial Court's entry in the 01 Case Garnishment Proceedings of written Findings of Fact, Conclusions of Law and Judgment on January 9, 2004 (Appendix 1), Mr. Lee filed post-trial motions under Rule 59, C.R.C.P. These motions were deemed denied as of March 26, 2004, by virtue of the Trial Court's failure to rule on them within sixty days of filing as required by Rule 59(j), C.R.C.P. This Rule provides:

> "The court shall determine any post-trial motion within 60 days of the date of the filing of the motion. . .Any post-trial motion that has not been decided within the 60-day determination period shall, without further action by the court, be deemed denied for all purposes including Rule 4(a) of the Colorado Appellate Rules and time for appeal shall commence as of that date."

Under Rule 4 of the Colorado Appellate Rules ("C.A.R."), the time for filing a notice of appeal with the Colorado Court of Appeals was forty-five days after the denial of the Rule 59 post-trial motions, or on or before May 10, 2004. Mr. Lee filed his Notice of Appeal on October 4, 2004, which was more than 45 days after his post-trial motions were deemed denied. As a result, the Colorado Court of Appeals dismissed his appeal (Appendix 2). The Colorado Supreme Court denied certiorari on May 16, 2005 (Appendix 3). The Petitioner filed his Petition for Writ of

Certiorari with this Court **more than 90 days after the Colorado Supreme Court denied certiorari**.

B. PETITIONER'S ASSERTED CLAIMS AGAINST THE KATCHEN TRUSTS

As far as can be determined from a reading the Petition, Mr. Lee's claims as applicable to the Katchen Trusts are that (1) service of process was improper and inadequate; (2) the garnishment hearing was improper because the Court considered issues beyond the scope of those raised in the traverse of garnishment; and (3) the Trial Court's Findings of Fact and Conclusions of Law were not supported by the evidence. Mr. Lee seeks a reversal of the default judgment and a trial de novo.

C. STATEMENT OF THE CASE AS TO THE KOMART LLCS

A brief background of the 02 Case is presented in Komart LLCs "Questions Presented," *supra*. Mr. Lee's arguments are identical to the arguments Mr. Lee made before trial courts in both the 01 and 02 Cases, as well as twice before the United States District Court for the District of Colorado [04-K-1786 (PAC) and 04-F-2308 (BNB)]. Both U.S. District Court cases were dismissed without appeal. Mr. Lee also raised these same claims through two appeals to the Colorado Court of Appeals (04 CA 2077 and 04 CA 2675 - both dismissed), through two Petitions for Certiorari to the Colorado Supreme Court (05 SC 169 and 05 SC 168 - both denied) and through an original proceeding filed with the Colorado Supreme Court under C.A.R. 21 - denied).

The Colorado courts' denial of Mr. Lee's requests for Jury Trial were proper, no order limiting "full discovery"

exists (or ever existed), and appeals were properly dismissed as interlocutory orders under Colorado law and Rules of Procedure.

Six different Judges of the Arapahoe County District Court presided over all or portions of the 01 and 02 Cases and have uniformly denied Mr. Lee the relief he has requested. In addition the Attorney Regulation Counsel of the Colorado Supreme Court has refused to sanction the various counsel (although, as Mr. Lee notes is investigating his present counsel). There is not one shred of evidence before any Colorado Court (or indeed in the Petition) that any attorney acted improperly, nor did any trial court judge or the Attorney Regulation Counsel appointed by the Colorado Supreme Court (C.R.C.P. 251.3). There is no evidence of "collusive fraud" or of improper remarks (which, even if true are not alleged to be directed toward Mr. Lee, but his attorney, Dr. Khanna).

Based upon the foregoing, and specific arguments by the Katchen Trusts (which are adopted as applicable by the Komart LLCs), the Petition should be denied.

D. REASONS FOR DENYING THE WRIT

1. THE KATCHEN TRUSTS:

a. THIS COURT LACKS JURISDICTION TO GRANT THE WRIT

Rule 10 of the Supreme Court Rules ("S. Ct. R.") provides that review on certiorari is not a matter of right but of judicial discretion, and a petition for writ of certiorari will only be granted for compelling reasons.

Mr. Lee has not presented any compelling reason for granting the Writ, but even if he had done so, he did not file his Petition with this Court within ninety days following the denial of his Petition for Writ of Certiorari filed with the Colorado Supreme Court and therefore, this Court lacks jurisdiction to grant the Writ.

The jurisdictional basis for the Petition is stated in the Petition to be "Sections 1983 and 1981 of Title 42" (which is believed to be 42 U.S.C. §§1981 and 1983). These sections, which were not raised in the lower court proceedings, do not confer jurisdiction upon this Court.

This case concerns post-judgment proceedings filed by the Katchen Trusts in order to obtain satisfaction of their October 31, 2001 default judgment against Mr. Lee. After three days of contested evidentiary hearings in which Mr. Lee and Mi Yung Lee, the Trustee of the RTG-TPD Trust were present in person and represented by counsel, the Trial Court, on October 3, 2003, entered oral findings of fact, conclusions of law and judgment, in favor of the the Katchen Trusts, finding that Mr. Lee was the legal and/or equitable owner of the interests. The written findings of fact, conclusions of law and judgment were entered by the Court on January 12, 2004 (the written judgment was signed on January 9, 2003 [sic]), (Appendix 1).

The following represents the timeline of the Orders from which Petitioner Lee appealed:

a. the Trial Court's Findings of Fact, Conclusions of Law and Judgment, the Trial Court's Order Re: Petitioner Stan Lee's Motion for Dismissal of Complaint, and the Trial Court's Order Re: Motions of Mi Yung Lee and Stan Lee Under Rule 52 and Other Rules, are all dated January 9, 2004

(and were entered on January 12, 2004). These Orders resolved all issues pending before the Trial Court.

b. On October 20, 2003, after the Trial Court orally announced its findings of fact and conclusions of law but prior to the written entry of the Orders, Mr. Lee prematurely filed a flurry of post-trial motions, including but not limited to his claim that he had not been properly served with process and that the Trial Court erred by considering issues not raised in the Traverse of Writ of Garnishment. The Trial Court's Orders dated January 9, 2004 denying the prematurely filed post-trial motions are attached as Appendix 4.

c. Mr. Lee filed additional, duplicative Rule 59 Post-Trial Motions on January 26, 2004.

d. Mr. Lee's Motions under Rule 59 were denied or deemed denied under Rule 59(j), C.R.C.P. (assuming that the Motions were not already denied by virtue of the Trial Court's Orders entered on January 9, 2004) 60 days after they were filed, on March 26, 2004.

e. No extensions were sought or granted for filing a notice of appeal.

f. The Trial Court entered a written order denying the January 26, 2004 post-trial motions on August 30, 2004.

g. The Notice of Appeal was filed on or about October 8, 2004.

h. The Colorado Court of Appeals, upon motion filed by the Katchen Trusts, dismissed the appeal as untimely on December 24, 2004 (Appendix 2).

i. Mr. Lee petitioned the Colorado Supreme Court to grant a writ of certiorari directed to the Court of Appeals. The Petition was timely filed and was denied by the Colorado Supreme Court on May 16, 2005 (Appendix 3).

j. Mr. Lee filed his Petition for Writ of Certiorari with this Court on or about August 29, 2005, 105 days after the denial of the Petition for Writ of Certiorari by the Colorado Supreme Court.

28 U.S.C. §2101(c) provides:

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

This Court has held that this 90-day requirement is mandatory and jurisdictional. *Missouri v. Jenkins*, 495 U.S. 33, 45, 110 S.Ct. 1651, 1660 (1990). See also, S.Ct.R. 13: "A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review."

S.Ct.R. 14 sets forth the required contents of a Petition for Writ of Certiorari. Although Mr. Lee seeks reversal of orders entered by the Trial Court in the Garnishment Proceedings in the 01 Case, and although required by S.Ct.R. 13(1)(e)(i and ii), he does not list any of these dates in his

Petition, and did not include in the Appendix the Trial Court's January 9, 2004 Order; the Order of the Colorado Court of Appeals dismissing Petitioner's Appeal; or the Order of the Colorado Supreme Court denying certiorari as part of his Petition for Writ of Certiorari filed with this Court. To make matters even more confusing, Mr. Lee is attempting to seek review of orders entered in two cases – the 01 Case and the 02 Case in the same petition, even though the 01 Case and the 02 Case are unrelated (although they do concern different aspects of the same project). Hence, the Clerk of this Court could not determine that the Petition was jurisdictionally untimely and consequently accepted the Petition for filing contrary to S.Ct.R. 13(1).

Mr. Lee's failure to file his Petition with this Court within ninety days after the Colorado Supreme Court denied certiorari on May 16, 2005 deprives this Court of jurisdiction and the Petition should be denied. Mr. Lee's Petition is also untimely as to the Komart LLC's as discussed in Section 2(b) below.

b. THERE WAS NO ERROR BY THE LOWER COURTS

Even if this Court had subject matter jurisdiction over the Petition, there is no compelling reason to grant the Petition because the Colorado Court of Appeals and the Colorado Supreme Court did not commit error, and none has been even alleged by Mr. Lee.

The Colorado Court of Appeals dismissed his appeal because it lacked jurisdiction due to his failure to file his Notice of Appeal within forty-five days after his post-trial motions were denied or deemed denied in the Trial Court. In *Arguelles v. Ridgeway*, 827 P.2d 553, 555 (Colo.App. 1991),

the Colorado Court of Appeals held that the sixty day time limit for a trial court to rule on a post-trial motion is jurisdictional. Likewise, the failure to file a notice of appeal with the Colorado Court of Appeals within forty-five days after the post-trial motions were deemed denied is a fatal jurisdictional defect. *Hussein v. Regents of University of Colorado, University of Colorado at Colorado Springs*, --- P.3d ----, 2005 WL 1176071 (Colo.App.,2005).

Certiorari review by the Colorado Supreme Court is discretionary. Rule 49, C.A.R., provides that "a review in the Supreme Court on writ of certiorari. . .is a matter of sound judicial discretion and will be granted only when there are special and important reasons therefor." Mr. Lee has not alleged an abuse of discretion by the Colorado Supreme Court in declining to review the Court of Appeals' dismissal, and has not raised any error by the Court of Appeals in dismissing his appeal to that Court.

S.Ct.R. Rule 10 provides, in pertinent part:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> > (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

The Petition alleges, at best, a misapplication of properly stated law by the Trial Court, and alleges no error by the Colorado Court of Appeals or the Supreme Court. Other than a more or less generic and ubiquitous reference to due process and equal protection violations, Mr. Lee has not alleged a violation of federal law. He has not cited any authority to show that the lower courts either decided an issue of federal law in a way that conflicts with other state or federal decisions or that there is an issue of federal law that has not been settled by this Court. Therefore, there are no compelling reasons to grant this Petition.

2. THE KOMART LLCS:

As Respondents the Katchen Trusts note in Section D(1)(a) above, S. Ct. R. 10 sets forth the considerations this Court will follow in reviewing the Petition. As is pointed above and as is elaborated below this Petition does not implicate any "federal question." The Petition is nothing more than another attempt by the Petitioner to have, now, this Court, correct Petitioner's own delays in properly prosecuting the 01 and 02 Cases under Colorado law and procedure. Having been consistently and uniformly rejected by Colorado

state courts at all levels and having twice had these same arguments turned down by the United States District Court for the District of Colorado, Petitioner now repeats before this Court the very same arguments. There are no "federal questions" presented by Petitioner other than his bare repetitive recitation of federal statutes and constitutional provisions, nor is there any conflict between the rulings of Colorado courts and any other state or federal court, including this Court (S. Ct. R. 10(b)).

a. MR. LEES'S TWO MOTIONS FOR JURY TRIAL WERE UNTIMELY AND UNAPPEALABLE INTERLOCUTORY ORDERS

Pursuant to C.R.C.P. 38(b), any party requesting a jury trial on any issue triable by a jury must file "a demand therefore at any time after the commencement of the action but not later than ten days after the service of the last pleading directed to such issue...." The last pleading asserting claims in this case was filed on December 6, 2002, eighteen months before Mr. Lee filed his first motion for jury trial. Because both motions for jury trial were untimely, they were properly denied by the Trial Court.

Moreover, Mr. Lee made no attempt to comply with C.R.C.P. 54(b)'s requirement that either Order be certified as final for the purposes of appeal. C.R.C.P. 54(b) provides the mechanism for considering whether or not a judgment is "final" for purposes of appeal. *Steven A. Gall, P.C. v. District Court,* 965 P.2d 1268, 1270 (Colo. 1998). Rule 54(b), C.R.C.P., provides as follows:

> **Judgment Upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim,

> counterclaim, cross-claim or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims, or parties and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Furthermore, any attempt to obtain a Rule 54(b) order would have been futile. A final judgment subject to an appeal must determine at least one issue or claim presented and also must determine each remedy that has been requested. *See Virdanco Inc. v. MTS Intern.*, 791 P.2d 1236 (Colo. App. 1990) (appeal dismissed for lack of a final judgment even when a C.R.C.P. 54(b) certification has been entered by the lower court). Here, Judge Macrum (and earlier Judge Leonard) was simply ruling on procedural motions (very tardy requests for jury trial) and there were no final judgments or orders subject to appeal as *none* of the issues in this case have been disposed of or decided. *See generally, Harding Glass Co., Inc. v. Jones,* 640 P. 2d 1123 (Colo. 1982).

The Komart LLCs suggested in their Motion to Dismiss Appeal before the Colorado Court of Appeals that if Mr. Lee desired to assert that he is entitled to a jury trial, his pre-trial remedy was to file an Original Proceeding with the Colorado Supreme Court pursuant to C.A.R. 21. In fact, Mr. Lee did

so on or about February 15, 2005 and his Original Proceeding was denied on or about February 18, 2005. Mr. Lee made no attempt to seek review of such Colorado Supreme Court Order and his defacto attempt to do so now is; jurisdictionally untimely. S.Ct.R 13 and 28, U.S.C. § 2101(c).

The Komart LLCs have no idea what Mr. Lee is addressing in his Petition to the extent that it relates to "limitation on full discovery" (Petition, p. 20, paras. 41-43, *passim*). Attached to the Petition at Appendix M-2 (pp. 146a-147a) is Mr. Lee's Motion to Establish Deadlines to file consolidated Motions Pursuant to C.R.C.P. 12(f), granted on December 15, 2004, *nunc pro tunc*, November 11, 2004. Therefore, and regardless of whether Mr. Lee is mistaken or simply dilatory, there is no Order relating to discovery to be appealed. Even if there were such an order, the arguments made above with regard to the lack of a final appealable Order pursuant to C.R.C.P. 54(b) would be equally applicable. Furthermore, Mr. Lee offers no explanation as to why, subsequent to the Entry of Appearance in June, 2004 Mr. Lee's new counsel made no attempt to conduct *any* discovery on his behalf for 13 months (trial in the 02 Case commenced on July 6, 2005). (*See, generally,* C.R.C.P. 16, 26 and 30-37).

b. NEITHER MR. LEE'S FORMER COUNSEL, VARIOUS JUDGES WHO HAVE HEARD PARTS OF THE 02 CASE NOR COUNSEL FOR OTHER PARTIES HAVE VIOLATED HIS RIGHTS TO EQUAL PROTECTION OR DUE PROCESS OF LAW.

Scattered throughout the Petition are contentions that numerous attorneys and judicial officers have violated Mr. Lee's Constitutional rights. There are, however, few specifics. To the extent Mr. Lee argues counsel made

inappropriate comments against his *attorney*, Dr. Khanna, such is not the case (compare the "excerpt" at para. 31, page 17 of the Petition with the actual transcript, Petition, Appendix "D", pp. 79(a)-99(a)). To the extent these comments are directed toward Judge Leonard (who recused herself on July 16, 2004), compare Mr. Lee's allegations with the transcript above and the further transcripts attached to the Petition at Appendixes "J" (pp. 112(a)-119(a) and "K" (pp. 120(a) - 138(a)). Furthermore, whatever allegations Mr. Lee makes against others, they are not addressed to Judge White who is in the middle of trial in the 02 Case (scheduled to be completed in late February, 2006).

Mr. Lee cites at pp. 20-21 of his Petition (see I(f)), *In Re Marriage of Gance*, 36 P. 3d 114 (Colo. App. 2001) and *Guevara v. Foxhoven*, 928 P. 2d 793 (Colo. App. 1996) for the proposition that an appellate court has the authority to relieve a party from fraud, or "collusion" under certain circumstances. However, unlike in those cases, this is not an independent equitable action. See *Gance,* 36 P.3d at 116, *Guevara,* 928 P.2d at 794-95.

c. CONTEMPT PROCEEDINGS AGAINST MR. LEE WERE NOT THE RESULT OF "COLLUSIVE FRAUD," WERE REQUIRED TO COMPEL HIM TO *ATTEND* THIRD PARTY MEDIATION (NOT TO SETTLE) ONLY IN THE 02 CASE, AND WERE IN ANY EVENT TERMINATED WITHOUT HIS BEING HELD IN CONTEMPT (WHEN HE FINALLY PARTICIPATED IN A MEDIATION BEFORE A THIRD PARTY NEUTRAL).

Much is made by Mr. Lee of the Contempt "Order to Show Cause" obtained by Komart LLCs' Counsel in the 02 Case when he refused to participate in mediation before the

Colorado Office of Dispute Resolution (*see Petition,* pp. 14-17, para. 14, paras. 20, 29, 36 *passim*). It was Mr. Lee's refusal to participate in mediation and not to engage in the court-ordered process which resulted in the order to show cause, not his refusal to enter into some type of "global settlement" Colorado along with other jurisdictions prohibits settlement discussions from being introduced (C.R.E. 408). Only Mr. Lee has ever discussed the failed mediation (or other settlement discussions) before this or any other court. Although Mr. Lee argues he was required to settle (and was the subject of a contempt proceeding when he "refused to sign on the bottom line" (Petition, para. 36, p. 18), such was not the case) (See Petition, Appendix H-1 at 107a).

Nor were the 01 and 02 Cases ever "linked by some strange argument" (Petition, paras. 14-15, p. 14). In fact, although counsel made joint efforts to settle both cases, the mediation which Mr. Lee failed to attend was *only* in the 02 Case. (*See*, Petition, Appendixes E, F, G & H). Voluntary discussions among counsel in these two cases towards a settlement do not demonstrate "collusive fraud" and in any event have never been the subject of any pleading or proceeding.

d. COUNSEL'S FILING WITH THE COLORADO ATTORNEY REGULATION COUNSEL WERE REQUIRED BY THE RULES OF PROFESSIONAL CONDUCT AND WERE NOT (AND HAVE NOT BEEN FOUND TO BE) AN ATTEMPT TO INTIMIDATE DR. KHANNA.

Mr. Lee also asserts that the Colorado Office of Attorney Regulation (established by the Colorado Supreme Court) acted to deprive him of his Constitutional rights (see Petition, paras. 75-77, pp. 27-28 where he complains of "callous persecution

by them of an innocent client and the Attorney Regulation Counsel appeared to favor such attorneys" *id*, para. 77).

Mr. Lee does not inform this Court that in November 2004 Dr. Khanna filed a request for investigation against the three named attorneys, and that the Attorney Regulation-Counsel took no action. Komart LLCs' counsel Howard Beck (and none other) did file a request for investigation in early 2005 as to Dr. Khanna and as Mr Lee concedes (*Id*, para. 75) that investigation continues. The relevant provision of Rule 8.3 of the Colorado adopted Rules of Professional Conduct provides as follows:

> (a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.

For Mr. Lee to assert that Komart LLCs' counsel filed this request for any improper purpose is not factually supported or supportable.

CONCLUSION

The untimely filing of the Petition for Writ of Certiorari has deprived this Court of jurisdiction to grant the Petition under S.Ct.R 13. Further as to all Respondents there is neither a legal nor factual basis to grant the Petition. As to the Katchen Trusts the considerations stated in Supreme Court Rule 10 are lacking. As to the Komart LLC's, any attempted relief in the 02 Case is premature as that case is still in trial with no error demonstrated through competent documents or

court records to show Mr. Lee's constitutional rights have been or are being violated.

Accordingly, the Petition should be denied.

Respectfully Submitted,

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Supermarket, LLC

APPENDIX 1

DISTRICT COURT ARAPAHOE COUNTY
STATE OF COLORADO
7325 South Potomac Street
Englewood, Colorado 80112

Case No. 01CV222
Div.: 4
[Filed January 9, 2003]

THE DIANE KATCHEN TRUST and the BARNEY KATCHEN TRUST Plaintiffs	)
v.	)
K-RODEO PROMENADE, a Colorado Limited Liability Company; STAN LEE, individually; and eKOMART.COM, INC., a Colorado corp. Defendants	)
KOMART KOREAN AND JAPANESE SUPERMARKET, LLC; and 2050 S. HAVANA ST. (DTSE), LLC Intervenors	)
RTG-TPD TRUST Additional Party	)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

THIS MATTER CAME ON TO BE HEARD for a hearing on the Plaintiffs' traverse to the Answers to Writs of Garnishment issued February 3, 2003, and served on 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC. The answers stated that the garnishees did not owe any monies or other personal property to Defendant Stan Lee. Plaintiffs have asserted that the garnishees are holding monies for distribution to Stan Lee as owner of membership interests in the garnishees. Plaintiffs request that this Court order that the money held by garnishees be paid over to Plaintiffs as judgment Creditors of Stan Lee.

RTG-TPD Trust ("The Trust") asserts that it owns membership interests in both limited liability companies and it is entitled to distribution from the garnishees free of any claims of the creditors of Stan Lee.

Hearings were held on July 21, 2003; August 21, 2003 and October 2, 2003. Plaintiffs appeared in person at the hearings on July 21, 2003 and August 21, 2003, and were represented at all said hearings by Richard S. Strauss, of the law firm of Hochstadt, Straw, Strauss & Silverman, P.C.; Defendant Stan J.H. Lee appeared in person at said hearings and was represented by David Fried, Esq. at the hearings on July 21, 2003 and August 21, 2003, and by David Fried and Kishan Khanna, Esq. at the hearing on October 2, 2003; Garnishees 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC were represented at said hearings by Howard Beck, Esq. of the firm Beck & Cassinis, P.C.; and Miyung Lee, Trustee of the RTG-TPD Trust appeared in person at the hearings on July 21, 2003 and

August 21, 2003 and was represented at all three hearings by Kishan Khanna, Esq.

THE COURT, having heard the testimony of and having had the opportunity to observe the demeanor and credibility of the witnesses, having reviewed the documents admitted into evidence and the legal briefs submitted by the Plaintiffs and the Trust, having heard the statements and arguments of counsel and being fully advised in the premises, DOTH MAKE THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER:

I. FINDINGS OF FACT

1. The evidence before the Court established that the Trust was established by a written Irrevocable Trust agreement dated May 18, 1999. (Exhibit 3) Stan Lee was both the Settlor of the Trust and the Trustee. The signature of Stan Lee, as Trustee, is dated October 30, 2001.

2. The Trust document (Exhibit 3) lists the assets and property which were transferred to the Trust. Membership interests in 2050 S. Havana St. (DTSE), LLC and Denver California Market, LLC d/b/a Komart Korean and Japanese Supermarket, LLC (Hereinafter referred to as the "limited liability companies") are not listed among the assets transferred to the trust.

3. The 1999 and 2000 partnership income tax returns for the limited liability companies do no indicate that the Trust was a member, and no schedule K-1 was prepared for the Trust for said years.

4. The limited liability company Operating Agreements were not signed by the Trust, and do not mention the Trust.

5. The 2001 returns of partnership income dated April 22, 2002, for 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC contain a schedule K-1 for the Trust, indicating that the Trust had a 15% interest in 2050 and a 17.65% interest in Komart.

6. No credible evidence has been introduced showing that membership interests in the limited liability companies were assigned or otherwise transferred at any time to the RTG-TPD Trust.

7. The Trust did not file income tax returns for the years 1999, 2000, 2001 and 2002 until April, 2003. See Trust Exhibits M - 1, M - 2, M - 3 and M - 4.

8. In April, 2003, Lee also attempted to file amended income tax returns for the limited liability companies, even though he was no longer operating manager for those limited liability companies. See Trust Exhibits I-1, I-2, I-3 and I-4. These unsigned amended returns have handwritten Schedule K-1's for the Trust, whereas all other parts of these returns are typewritten.

9. No evidence has been introduced showing that any consideration was give for the transfer of any membership interests in the limited liability companies to the Trust.

10. Indeed, the evidence indicates that Lee, and no the Trust, received interests in the limited liability companies in consideration for his services rendered on behalf of those limited liability companies.

11. In paragraph 46 of his counterclaim in the case of 2050 S. Havana (DTSE), LLC versus Lee, Case No. 02CV384, Arapahoe County District Court, Lee admits that

the operating agreement for said limited liability company provided for him to serve as project manager for the Denver project and to receive a percentage interest in the shopping mall, supermarket and restaurant.

II. CONCLUSIONS OF LAW

BASED UPON THE ABOVE FINDINGS OF FACT, THE COURT CONCLUDES AS FOLLOWS:

1. Stan Lee did, indeed, receive an ownership interest in the limited liability companies, and those interests have never been transferred to the Trust.

2. Stan Lee owns a 15% interest in 2050 S. Havana St. (DTSE), LLC and a 17.65% interest in Komart Korean and Japanese Supermarket, LLC.

3. Plaintiffs have sustained their burden of proving that Stan Lee is the owner of the membership interests in 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC.

4. As a result, any distributions payable by those limited liability companies must be paid to Plaintiffs as Lee's judgment creditors. Such payments are to be made at the address designated by Plaintiffs in writing.

5. Based upon the above, the Court need not address Plaintiffs' arguments that the Trust was a revocable trust or that the trust is void under the Rule Against Perpetuities.

IT IS THEREFORE ORDERED, ADJUDGE AND DECREED:

1. Plaintiffs are the owners of the respective interests in the limited liability companies, to wit: 17.65% interest in and to Komart Korean and Japanese Supermarket, LLC, and 15% interest in and to 2050 S. Havana St. (DTSE), LLC. The limited liability companies shall note Plaintiffs' ownership of record. Said membership interests are transferred to Plaintiffs toward partial satisfaction of their judgment pursuant to the Court's previous Order of December 16, 2002.

2. The Intervenors' Motions to interplead funds, filed respectively on February 13, 2003 and September 18, 2003 are hereby GRANTED.

3. The funds so deposited to the Registry of the Court shall be paid and disbursed to Plaintiffs, in care of Hochstadt, Straw, Strauss & Silverman, P.C., 2043 York Street, Denver, CO 80205 and credited against the Plaintiffs' judgment against Defendant Stan Lee.

DONE AND SIGNED in Open Court this 9th day of January, 2003.

BY THE COURT:

/s/ _____
Hon. J. Mark Hannen
DISTRICT COURT JUDGE

APPENDIX 2

COLORADO COURT OF APPEALS

No. 04ca2077
Tr. Ct. No. 01CV222

[Filed December 24, 2004]

Diane Katchen Trust and	)
Barney Katchen Trust,	)
Plaintiff-Appellees,	)
	)
v.	)
	)
Stan Lee and RTD-TPD Trust,	)
Mi Yung Lee Trustee,	)
Defendant-Appellants,	)
	)
and	)
	)
2050 S. Havana Street LLC, and	)
Komart Korean & Japanese Supermarket,	)
Intervenor-Appellees.	)
	)

Upon consideration of the motion to amend the caption, the Court GRANTS the motion.

Upon consideration of the motion to dismiss the appeal as untimely filed, the Court GRANTS the motion. The trial court

must rule upon a motion for post-judgment relief pursuant to C.R.C.P. 59 within 60 days. C.R.C.P. 59(j). If the trial court fails to rule on the motion within 60 days, it is deemed denied by operation of law and the time for filing the notice of appeal commences. A trial court lacks jurisdiction to rule on a post-trial motion after the 60th day; such a ruling is void. Canton Oil Corp. v. District Court, 731 P.2d 687 (Colo. 1987); Anderson v. Molitor, 738 P.2d 402 (Colo. App. 1987).

Therefore, the Court finds that, at the latest, the C.R.C.P. 59 motion was deemed denied by operation of law on March 9, 2004. Thus, a notice of appeal should have been filed on or before April 23, 2004. C.A.R. 4(a); Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980). However, appellant's notice of appeal was not filed until October 8, 2004, and it does not appear that any extension of time for appealing was ever granted. Moreover, this Court has authority to grant only a 30-day extension of time to file a notice of appeal, and that period expired on May 24, 2004. Therefore, this Court is without jurisdiction over the appeal.

BY THE COURT:

Rothenberg, J.
Webb, J.
Piccone, J.

Dated: Dec. 24, 2004

APPENDIX 3

SUPREME COURT
STATE OF COLORADO
TWO EAST 14TH AVENUE
DENVER, COLORADO 80203

Case No. 05SC169

[Filed May 16, 2005]

STAN J.H. LEE and	)
RTG-TPD TRUST,	)
Petitioners	)
	)
v.	)
	)
THE DIANE KATCHEN TRUST	)
and THE BARNEY KATCHEN TRUST	)
Respondents	)
	)

CERTIORARI TO THE COURT OF APPEALS,
04CA2077
DISTRICT COURT, ARAPAHOE COUNTY,
01CV222

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MAY 16, 2005.

APPENDIX 4

DISTRICT COURT ARAPAHOE COUNTY
STATE OF COLORADO
7325 South Potomac Street
Centennial, Colorado 80112

Case No. 01CV222
Div.: 206
[Filed January 9, 2004]

THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually; and	)
eKOMART.COM, INC., a Colorado corp.	)
Defendants	)
	)

ORDER RE: MOTIONS OF MI YUNG LEE AND STAN LEE UNDER RULE 52 AND OTHER RULES

The motions of Mi Yung Lee and Stan Lee under Rule 52 Read with Rule 59(3) and Rule 62(a) (b) & (c) C.R.C.P. on Findings of Court of 10/03/03 on Plaintiff's Notice of Hearing Dated June 6 & 9, 2003, are DENIED.

Plaintiffs' request for an award of attorney fees and costs incurred with respect to these motions is DENIED.

SO ORDERED.

Dated this 9th day of January, 2004.

BY THE COURT:

/s/ _____
J. Mark Hannen
District Court Judge

DISTRICT COURT ARAPAHOE COUNTY
STATE OF COLORADO
7325 South Potomac Street
Centennial, Colorado 80112

Case No. 01CV222
Div.: 206
[Filed January 9, 2004]

THE DIANE KATCHEN TRUST	)
and the BARNEY KATCHEN TRUST	)
Plaintiffs	)
	)
v.	)
	)
K-RODEO PROMENADE,	)
a Colorado Limited Liability Company;	)
STAN LEE, individually; and	)
eKOMART.COM, INC., a Colorado corp.	)
Defendants	)
	)

ORDER RE: DEFENDANT STAN LEE'S MOTION FOR DISMISSAL OF COMPLAINT

This Matter comes before the Court for consideration of the motion of defendant Stan Lee ("Lee") for dismissal of the complaint. The Court concludes as follows:

1. Lee's Motion is based on C.R.C.P. 12(b)(2) to (4). However, C.R.C.P. 60(b) specifies the procedure for setting aside a default judgment.

2. A motion to set aside a judgment on the basis of fraud,

misrepresentation, or other misconduct of an adverse party must be made within six months of the entry of judgment. C.R.C.P. 60(b)(2). A motion to set aside a judgment for any reason not enumerated in C.R.C.P. 60(b)(1), (2), (3), or (4) must be made within a reasonable time after the entry of judgment. C.R.C.P. 60(b)(5).

3. Lee first asserted improper service of process when he filed this motion on September 25, 2003, more than two and one-half years after the entry of default judgment. The motion was not filed within the six months required by C.R.C.P. 60(b)(2), nor within the reasonable time required by C.R.C.P. 60(b)(5).

4. In addition, Lee entered a general appearance in this action through counsel when he filed a response on November 19, 2002, to the plaintiffs' motion to transfer property towards satisfaction of judgment. Lee and his counsel participated in subsequent hearings concerning ownership of interests in 2050 S. Havana St. (DTSE), LLC and Komart Korean and Japanese Supermarket, LLC. Because Lee entered a general appearance and actively participated in this action, he waived any objections to the Court's jurisdiction over him.

5. Also, the default judgment is supported by the affidavit of James Katchen and the affidavit of Les Roberts, the process server. Lee has not presented any countervailing affidavits or other evidence to support his arguments that service of process was defective

6. Accordingly, Lee's Motion for Dismissal of Complaint is DENIED.

7. Plaintiffs' motion to strike is DENIED.

8. Plaintiffs' motion for sanctions is DENIED.

SO ORDERED.

Dated this 9th day of January, 2004.

BY THE COURT:

/s/ _____
J. Mark Hannen
District Court Judge

APPENDIX 5

COLORADO COURT OF APPEALS

No. 04ca2675
Tr. Ct. No. 02CV0384

[Filed December 24, 2004]

Stan J. H. Lee	)
Appellant/Defendant &	)
Counterclaimant	)
	)
v.	)
	)
2050 S. Havana (DTSE) LLC, dba	)
Komart Mall on Havana Heights and	)
Komart Korean & Japanese Supermarket,	)
LLC	)
Appellee/Plaintiff & Counterdefendant	)
	)

DEFENDANT'S NOTICE OF APPEAL AGAINST TWO ORDERS OF THE TRIAL COURT DATED 15TH DEC. 2004 DENYING JURY TRIAL AND DISCOVERY

COMES NOW the Appellant/Defendant & Counterclaimant Mr. Stan J.H. Lee through his Attorney Dr. Kishan K. Khanna Ph.D. and files this Notice of Appeal for relief against two laconic orders without any reasons dated 15th Dec.

2004 passed by the Trial Court, copies annexed as EXHIBIT A and EXHIBIT B.

1. FACTS IN BRIEF

1. After withdrawal of the earlier Attorney of Defendant Mr. David M. Fried the undersigned Attorney Dr. Kishan K. Khanna filed his appearance on 3rd June 2004 and requested for Jury Trial and further discovery, immediately thereafter on 4th June 2004, because grievously dangerous treatment was inflicted on the Defendant and his attorney on 3rd June 2004 by the Honorable Judge. These facts have been recorded in the Motions under Rule 97 filed by the Defendant for recusal of the Honorable Judge.

2. In this case and the other case No. 01 CV0222 before another Honorable Judge Mr. Mark J. Hannen -"linked" with this Case at the instance of the Plaintiff's Attorney Mr. Howard J. Beck for fraudulent purposes -- the Defendant's Attorney Mr. Fried colluded with Attorney Mr. Howard J. Beck and Attorney of the Plaintiff in case No. 01 CV 0222 Mr. Richard S. Strauss -- to deny justice to the Defendant.

3.In the present case, amongst several other things, in collusion with Mr. Beck, Mr. Fried obtained orders of the Honorable Court for compulsory, time bound "global settlement" (within 2 weeks) against his own client. In the other case he actively pleaded and impressed upon the Honorable Judge to pass a quick order against Mr. Stan Lee, so that the "global settlement" planned by him in this Case No. 02 CV 0384 could take place.

4. When Defendant Mr. Stan Lee requested Attorney Mr. Fried to withdraw because of his continued acts against the interests of Mr. Stan Lee, Mr. Fried and Mr. Beck retaliated

with a contempt motion by Mr. Beck that the Defendant Mr. Start Lee disobeyed the court order in that he did not personally come down to Colorado from California for "global settlement" scheduled by Mr. Beck on 16th March 2004 – even though Mr. Fried continued to be the attorney of Mr. Stan Lee on 16th March 2004 and was in Colorado.

5.Thus even though not required to attend the "global settlement" buy any law, Mr. Stan Lee was slapped with contempt and warrants and further vindictive oral orders of the Honorable Judge that Mr. Stan Lee would continue to be in jail after arrest as long as she would not find time to set a bond for him.

6. Thus the life and liberty of an innocent citizen was put at stake in a civil case on the basis of obviously false and fraudulent representations of Mr. Beck only to show the power of Mr. Beck and to teach Mr. Stan Lee a lesson for daring to ask Mr. Fried to withdraw because Mr. Fried had been faithful to the Plaintiff and his attorney Mr. Beck.

7.One could expect such a retaliatory act on the part of Mr. Fried and Mr. Beck, but even Honorable Judge Marilyn Leonard did not care to verity the veracity of the obviously false and concocted allegations of Mr. Beck and convicted Mr. Stan Lee "in absentia" without even a semblance of investigation.

8. In fact Honorable Judge Marilyn Leonard was pleased to treat the attorney of the Defendant Mr. Stan Lee also as another criminal -- who did not deserve any courtesy – because as Mr. Beck described him --" he was an Indian - Asian Indian -- and he spoke English as a "second language" like his Korean Clients, and his mother tongue was HINDU, and his Ph.D. was from Bombay ….. "

9. The main reason why Honorable Judge Marilyn Leonard was pleased to work against the canons of Judicial Conduct appears to be that Mr. Beck claimed 33 years of legal practice -- buttressed by the legal practice of 20 years of Attorney Mr. Fried – and this made him some superhuman with divine rights against lesser mortals like Mr. Stan Lee and "Asian Indian" Dr. Khanna.

10. The unethical, unprofessional and racist conduct of attorneys Mr. Beck and Mr. Fried has been separately reported to the Attorney Regulation Committee and hopefully they shall be disbarred for such atrocious conduct so that better interests of an impartial and fair judicial system and a more responsible legal profession prevail.

11. Rule 97 Motions were filed so that Honorable Judge Marilyn Leonard be pleased to recuse since willingly and knowingly permitted such an atrocious unethical, unprofessional and racist conduct by two attorneys in an open court, and followed up by summarily punishing the Defendant Mr. Stan Lee and his attorney Dr. Kishan K. Khanna.

12. The conduct of Marilyn Leonard is highlighted in the prolonged disparaging tirade of Mr. Beck and Mr. Fried and willing joining in by her in the transcript of the proceedings of Case No. 02 CV 384 on 21st Nov. 2003.

13.in much the same way, in Case No. 01 CV 0222, the Honorable Judge Mark J. Hannen was pleased to pass a nullity order -- an order not based on the evidence presented before him by the parties in a formal Hearing conducted by him -- but based on some representations made on the side by Attorneys Mr. Beck and Mr. Strauss - clearly arbitrary and capricious, and against common sense, established norms of

judicial conduct, and the law laid down by the Supreme Court of Colorado.

14. Thus the interests of Defendant Mr. Lee have been so grievously injured by the collusion of his own Attorney Mr. Fried, with the Plaintiff's Attorneys Mr Beck and Mr. Strauss --with a total collective practice of over 80 years proving that they are able to obtain whatever orders they want from the Benches.

15.In his eagerness to complete the case fast for his collusive partner Mr. Beck, Mr. Fried had not demanded jury trial and had not completed full discovery in this Case 02 CV384.

16. As explained above Jury trial has become all the more necessary for the defendant so as to safeguard his interests, because there is no guarantee that the presiding Honorable Judges will not be influenced by Mr. Beck like Honorable Judges Leonard and Hannen.

17. Some assurance against such arbitrary, and capricious findings is the constitutional safeguard of a jury trial and it is considered axiomatic that no fair trial can be conducted without full discovery.

18. However, the Honorable Court has now passed two laconic orders dated 15th Dec. 2004 denying Defendant's demand for jury trial and granting Plaintiff's motion for no further discovery.

19. It need not be repeated that Plaintiff's Attorney Mr. Beck has once again demonstrated that he can make any false and fraudulent allegations to influence the Bench by claiming a legal practice of 33 years and the Honorable Judges would not find it necessary to verify the facts thereafter.

20. Stan Lee refers to and relies on the transcript of the proceedings of the court in this case on 21st Nov. 2003 as an example of how badly the judicial process is abused by attorneys claiming a lengthy legal practice of 33 years.

21. These laconic orders have been passed by the Honorable Judge against the Defendant much in the same way as per past experience of the Defendant.

22. The Defendant has become acutely aware with personal sad experience of the predisposition of the Honorable Judges to favor an attorney with a "big name" and "small registration number" and therefore requests the Court of Appeals to ensure that justice is done in this and other cases, since the manner in which orders are passed by the Honorable Judges even such serious cases shows that there is something terribly wrong with the system.

II. GROUNDS FOR APPEAL

23.Jury trial is a constitutional right of the Defendant and ought not to be denied to him just because it will be cumbersome or inconvenient to the Plaintiffs who have retained a "senior" an attorney with 33 years of legal practice.

24.The Defendant has already suffered tremendously financially, physically, and emotionally with arbitrary, and capricious Bench orders and threats of continued jail term -- only because the Defendant dared to request withdrawal of Mr. Fried who was colluding against him with the Plaintiff's Attorney with 33 years of legal practice.

25. That is why Mr. Fried had not demanded jury trial and did not complete full discovery. The Defendant should not

suffer on account of deliberate failures on the part of his former attorney.

26. Several courts have found it necessary to rule that every litigant citizen has a constitutional right, and the State guarantees implicitly and explicitly a fair and impartial judicial system, and this right cannot be abridged or taken away by the deliberate abuse of discretion by an Honorable Judge to favor some members of the legal fraternity.

27. There is no reason why the Plaintiffs should object to and the Honorable Judge should not allow a jury trial against the constitutional provisions – especially when the facts reveal that the Defendant has been so badly prejudiced by at least two Bench judgments.

28. It appears that the Honorable Judges feel obliged to ignore all the instructions of the superior courts, judicial norms, Colorado Rules of Judicial Conduct, and Colorado Rules of Civil Procedure in favor of the Plaintiff's Attorney with a "big name" and a "small Registration Number" to deny even due process to other litigants.

29. These and other cases like Case No.01 CV 5606 before Honorable Judge Robert S. Hyatt, Case No. 02 CV 5947 before Honorable Judge Shelly I. Gilman, followed by Case No. 03 CV 4476, to mention only a few, show that there is a system of express invidious favoritism practiced by Honorable Judges in favor of "senior" members of the legal fraternity -- against constitutional provisions, by violating constitutional guarantees of equality, signifying open, abject, unjustified favoritism in different courts by different judges. This could not be a mere statistical coincidence. In fact each of these cases must be investigated to evolve a constitutional solution for this grave endemic malady.

III. FINALITY OF THE ORDER

30.The Honorable Judge has passed the orders denying jury trial and discovery, making it certain that the Defendant will not be able to get a free and fair trial and therefore it will be futile to continue expense of time, effort and money with his fate decided in advance.

31. If that is the case, the Defendant would be well advised to agree to pay off the Plaintiffs their claim without raising an issue of his own counterclaim in compliance with the terms and conditions set by the Plaintiff's attorney Mr. Beck for the so called "global settlement", knowing fully well that no justice can be obtained in Bench trials, unless the Defendant hires an attorney with an even "bigger name" and "smaller registration number" which of course he is unable to afford.

32.In this respect therefore the order of the Honorable Judge is final because if the order of the Trial Court prevails, the Defendant would be forced to sign on the dotted line in this case as he has been forced to sign on the dotted line in Case No. 01 CV 0222.

IV. ISSUES

33.The impropriety of unethical, unprofessional and fraudulent conduct of the Defendant's Attorney in violation of Colorado Rules of Professional Responsibility.

34.Active discrimination and favoritism practiced by Honorable Judges based on some undeclared and illegal considerations.

35. The impropriety of the unethical and unprofessional conduct of the Honorable Judges in clear violation of Cannons of Colorado Rules of Judicial conduct.

36. Violation of laws of the land and denial of natural justice and guaranteed due process by the Court to the defendant and open undermining of the judicial system of the State by active collusion of "senior" lawyers and Honorable Judge.

37. Denial of fair and impartial judicial process as per declared law and as guaranteed by the Constitution of USA and Constitution of Colorado.

38. Palpable and arbitrary abuse of discretion by Honorable Judges with a bent of mind to favor attorneys with a "big name" and "small registration number" without assigning any reason whatsoever to justify their order.

V. CASE LAW RELIED UPON

39. The Defendant will rely on the following, amongst others, case law

(I) Holland v. Board of Commissioners 883 P. 2d 500
(ii) Johnson v. District Court, 647 P. 2d 952
(iii) Goebel v. Benton 830 P.2d 995
(iv) Taylor v. Hayes, 418 94 S. Ct. 2697, 41 L. Ed. 2d 897
(v) Moody v. Corsentino, 843 P. 2d 1335
(vi) Hammons v. Birket, 759 P. 2d 783
(vii) Civil Service Commission v. Pinder 812 P. 2d 645
(viii) Continental Air Lines, Inc. Keena, 731 P 2d 708
(ix) Keybank Nat. Assn v. Mascarenas 17 P. 3d 209
(x) In Memorial Gardens, Inc. v. Olympian Sales & Management Consultants, Inc., 690 P. 2d 207
(xi) Sunny Acres Villa, Inc., v. Cooper, 25 P. 3d 44
(xii) Artes- Roy v. Lyman, 833 P. 2d 62

(xiii) Sa Bell's Inc. v. City of Golden, 832 P. 2d 974
(xiv) People v. District Court, 560 P. 2d 828
(xv) Miller v. First National Bank of Englewood, 300 P. 2d 99
(xvi) Sewell v. Public Service Co. of Colorado,832 P. 2d 994
(xvii) Churchy v. Adolph Coors Co., 739 P. 2d 1336
(xviii) Kaiser Foundation Health Plan v. Sharp., 741 P. 2d 714
(xix) Hatfield v. Barnes, 168 P. 2d 552
(xx) Armstrong v. Manzo, 380 US 545
(xxi) Rules of Department of Labor & Industrial Services ex rel. Hansen v. East Idaho, 111 Idaho 137, 721 P. 2d 736
(xxii) In Re Marriage of Goellner, 770 P. 2d 1387.

Dated this 22nd Dec. 2004

Respectfully submitted

DR. KHANNA ESQ. LLC.